

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	CG Docket No. 03-123
Telecommunications Relay Services	)	(Formerly CC
Docket 98-67)		
And Speech-to-Speech Services for	)	
Individuals with Hearing and Speech Disabilities	)	
	)	
	)	
Petition for Rulemaking to Mandate	)	
Captioned Telephone	)	
_____	)	

**PETITIONER'S REPLY COMMENTS**

Petitioners <sup>1</sup> submit these reply comments to address issues raised in the Comments filed in response to their Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service.

Over 390 comments were filed in support of the Petition. This overwhelming outpouring of support came primarily from consumers: individuals with hearing loss themselves as well as their spouses, children, other family members, and co-workers and friends. As the Petitioners

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<sup>1</sup> Hearing Loss Association of America (formerly Self Help for Hard of Hearing People SHHH), Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), American Academy of Audiology (AAA), American Association of People with Disabilities (AAPD), American Speech Speech-Language-Hearing Association (ASHA), Association of Late-Deafened Adults (ALDA), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), League for the Hard of Hearing (LHH), National Association of the Deaf (NAD), National Cued Speech Association (NCSA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), California Association of the Deaf (CAD), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH).

explained in their Petition, consumers speaking from their hearts have emphatically expressed how much the service changed their lives. Not surprisingly, a number of them told of how it improved their ability to work or to gain employment. Samples of comments include:

“I work for the Federal Government. Without CapTel, I would not be able to do the work independently and would have to rely on someone to do the job. With CapTel, I have been promoted one level up!” (Linda M. Webb, MD. 12/22/05.)

“This service is probably the MOST important one that I need to lead a ‘normal’ life.” (Malisa W. Janes, RhD, TX. 12/01/05.)

“There are people in my family I haven’t spoken on the phone with for several years because I cannot understand them. I am also an RN. Taking telephone orders from an MD for drug doses increasingly difficult for me to do safely.” (Margaret Ellertsen, MA. 12/13/05.)

“The Captel relay system is extremely important to me. It is making it easier for me to get my startup business up and running.” (Jerone A. Bowers, OH. 12/21/05.)

“My husband’s business demands his using the telephone. He lives in fear of losing his business and having to be forced into retirement which we can ill afford now with a child entering college in 2007.” (Roz Cohen, MA. 12/28/05.)

“My daughter is deaf and uses a cochlear implant to hear. Until we tried a captioned telephone, she had never called a friend on her own and we were unable to leave her alone safely. Suddenly she is able to do everything any other pre-teen can do.” (Terri Charles, MA. 12/07/05.)

Consumers want this service badly. Captioned Telephone Service (CTS) provides consumers with the most functionally equivalent experience available today. Many consumers expressed their frustration that the service is not universally available and in some states is available only on a limited

basis. Petitioners reiterate that for true functional equivalence to exist, captioned telephone service must be made available to all who wish to use it nationwide.

State utilities commissions and relay providers also submitted comments. The California Public Utilities Commission (CPUC) agreed with Petitioners' contention that CTS is "closer to synchronous communication than the asynchronous methods of traditional relay."<sup>2</sup> They additionally acknowledged that CTS users consider the service to be extremely valuable. Both the Florida Public Service Commission (FPSC) and Hamilton Relay noted that captioned telephone service is the most functionally equivalent telephone service available for the target population, and that there is no disputing the value and importance of the service.<sup>3</sup> Hamilton Relay believes CTS should be available to all who wish to use it without restrictions.<sup>4</sup> Sprint Nextel Corporation has seen usage of their captioned telephone service increasing and predicts that it will continue to increase as the baby boom generation starts to experience hearing loss.<sup>5</sup> It stated that these demographic trends strongly suggest that the time is right for the FCC to examine mandating

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<sup>2</sup> Comments of The California Public Utilities Commission and the People of the State of California, Filed December 29, 2005, (CPUC Comments) at 2.

<sup>3</sup> Comments of the State of Florida Public Service Commission, filed December 21, 2005, (FPSC Comments) at 2-3; Comments of Hamilton Relay, Inc., filed December 30, 2005, (Hamilton Comments) at 1-2.

<sup>4</sup> Hamilton Comments at 1.

<sup>5</sup> Comments of Sprint Nextel Corporation, filed December 30, 2005, at 2.

CTS.<sup>6</sup>

Giving Individual States Discretion to Determine If They Will Offer  
Captioned  
Telephone Service Is Not Functional Equivalence

In opposition to the Petition, MCI argues that even though CTS is a fairly new technology, gaining approval by the Commission for reimbursement from the Telecommunications Relay System (TRS) fund only two years ago, it has already been made available in 33 states. It argues that because of this fact a mandate is not needed to foster further deployment.<sup>7</sup> Petitioners disagree with this assumption. However, even if it were true, it is irrelevant that over time market forces might bring this service to all 50 states; the Commission is charged with bringing functional equivalence to individuals with disabilities *now*, not at some unknown date in the future. MCI's comments neglect to mention that in almost all of those 33 states service is limited by caps on the number of new users that can be added each month (in some cases as few as five per month!). MCI suggests that states that have determined that captioned telephone is too expensive to provide at this time should "be allowed to balance the benefits of this service against the needs of other TRS users."<sup>8</sup> This suggestion is unsupported by law or public policy. Petitioners object to the notion of fostering competition among different segments of the disability community as to who should have access to services and who should not.

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<sup>6</sup> *Id.* at 2.

<sup>7</sup> Comments of MCI, Inc, filed December 30, 2005, (MCI Comments) at 2-4.

<sup>8</sup> *Id.* at 4.

## Reimbursement For CTS

The two state utilities commissions that filed comments were supportive of a mandate only if the cost impact can be diminished or controlled.<sup>9</sup> The FSCP supports the Petition but would be forced to oppose it if states have to cover the cost.<sup>10</sup> Florida asserts that mandating CTS service will result in such increased costs that it will be forced to restrict service due to budgetary constraints unless CTS is funded through the interstate fund.<sup>11</sup> The CPUC urges funding from the interstate TRS fund for similar reasons.<sup>12</sup> While Petitioners sympathize with the states' concerns about containing their program costs, it is worth noting that neither California nor Florida – the only states concerned enough to file comments – offers any data in support of their assertion that a mandate would lead to budget shortages. More to the point, if relay usage increases – even surges – due to the wider availability of CTS, Petitioners suggest this simply means there is yet an unmet need for equivalent access to the nation's telephone network. Furthermore, the mandate for relay services found in Title IV of the Americans with Disabilities Act and codified in Section 225 of the Telecommunications Act<sup>13</sup> requires the exchange carriers to ensure that the service is provided, not the states; the states become involved to varying degrees – and indeed may have their relay programs certified as ADA compliant – on their own prerogative

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<sup>9</sup> CPUC Comments at 10; FPSC Comments at 4.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> CPUC Comments at 4-7.

<sup>13</sup> 47 U.S.C. § 225 (d)(3)(B).

through their regulatory bodies and some, like Florida and California, through their legislatures as well, establishing program parameters, budget appropriations and cost controls such as surcharge caps. Petitioners recognize that while such involvement can serve beneficial purposes, it also can result in lessened ability to timely respond to changes in technology, the market and federal law. A state that faces an unexpected and eminent budget problem as a result of mandated CTS should be free to seek any necessary authorization from the FCC to establish needed and reasonable temporary expenditure controls in its TRS program while it pursues remedial measures, such as seeking a supplemental legislative budget appropriation or legislative authorization to increase rate surcharges.

#### Proprietary Nature of Captioned Telephone Service

MCI and the CPUC both raise the concern that difficulties will arise because Ultratec holds the exclusive rights to the only version of CTS – CapTel – currently available.<sup>14</sup> Petitioners reiterate that when the FCC issued its Declaratory Ruling approving CTS for reimbursement through the TRS fund, it dealt with concerns about CTS being proprietary by establishing a generic term and definition for this service. The Commission explained, “to avoid authorizing a particular proprietary technology, rather than a particular functionality or service, we define captioned telephone VCO [voice carry over] service that we recognize as TRS in this *Declaratory Ruling* as any service that uses a device that allows the user to simultaneously listen

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<sup>14</sup> *Id.* at 9-10; MCI Comments at 4-6.

to, and read the text of, what the other party has said, on one standard telephone line.”<sup>15</sup> By this action, the Commission made clear that anyone is free to offer competing CTS.

Moreover, this would not be the first time that the Commission has mandated a proprietary relay technology. The FCC mandated VCO in its very first set of rules governing TRS, despite the fact that Ultratec invented and patented this technology.<sup>16</sup>

MCI argues that the fact that no other companies have entered into the market when CTS is provided in 33 states gives at least some indication that increasing the size of the market will not automatically result in more competition.<sup>17</sup> Petitioners disagree and believe that a mandate will in fact make it much easier and less risky for competitors to enter the market place.

Petitioners agree that before mandating CTS, the FCC must do due diligence to ensure that the cost of the technology would be reasonable. Petitioners concede that currently, for a TRS provider to offer Ultratec’s CapTel service, it needs a license to do so. Because of this fact Petitioners encourage the FCC to ensure that the comprehensive cost of captioned telephone service technology is reasonable.

## Conclusion

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<sup>15</sup> *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speaking Disabilities*, 18 FCC RCD 16121 (2003) (Declaratory Ruling). Petitioners take the opportunity here to suggest that the FCC amend this definition to include two-line CTS as well: “. . . on one or two standard telephone lines.”

<sup>16</sup> 47 C.F.R. § 64.604 (b)(5).

<sup>17</sup> MCI Comments at 4-5.

Without a mandate, consumers in many states will remain indefinitely without access to functionally equivalent telephone service. Petitioners urge the FCC to open up CTS to all who need it and in so doing eliminate barriers to telecommunications access for a significant segment of the population.

Respectfully submitted,



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<sup>18</sup> The California Coalition includes: NorCal Center on Deafness; Greater Los Angeles Agency on Deafness; Deaf and Hard of Hearing Service Center; Deaf Community Services of San Diego; Center on Deafness Inland Empire; Tri-County GLAD; Orange County Deaf Equal Access Foundation; and Deaf Counseling, Advocacy and Referral Agency.

<sup>19</sup> Members of DHHCAN are: American Association of the Deaf-Blind, American Deafness and Rehabilitation Association, Association of Late-Deafened Adults, American Society for Deaf Children, Conference of Educational Administrators of Schools and Programs for the Deaf, Communication Service for the Deaf, Deaf Seniors of America, Gallaudet University, Gallaudet University Alumni Association, Jewish Deaf Congress, National Association of the Deaf, National Black Deaf Advocates, National Catholic Office of the Deaf, Registry of Interpreters for the Deaf, Telecommunications for the Deaf and Hard of Hearing, USA Deaf Sports Federation, and Caption Center/WGBH.

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